



Legislative Background Brief

for the
Economic Affairs Interim Committee

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Workers' Compensation Court and Judge

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This briefing paper, based on a report prepared in 2014, will provide information on:

- Workers' Compensation Court history, including statutory changes over time;
- the process of appointing workers' compensation judges;
- jurisdiction;
- a list of workers' compensation judges since inception; and
- selected court statistics.

History

The 1975 Montana Legislature created a Workers' Compensation Court with one judge and provided that the judge had the authority to hold hearings, make final determinations of workers' compensation disputes, and determine and fix benefits that are to be paid. House Bill 100 in 1975 contained a mix of administrative and judicial approaches, including the following provisions:

- proceedings are to comply with the Montana Administrative Procedure Act;
- an appeal of the workers' compensation judge's final decision is to be filed directly with the Supreme Court "in the manner provided by law for appeals from the district court in civil cases"; and
- the workers' compensation judge is not bound by common law and statutory rules of evidence. The 1987 Legislature amended this statement to say the judge "is bound" by common law and statutory rules of evidence.

Prior to creation of the Workers' Compensation Court, the Industrial Accident Board held administrative-style hearings regarding disputed workers' compensation claims. Judicial rules of evidence were not used; rather, the Board adopted its own rules for hearings.

A 1980 analysis of the Workers' Compensation Court by then workers' compensation judge William E. Hunt and Gregory A. Luinstra in the *Montana Law Review* (vol. 41) commented on one major difference between district courts and the Workers' Compensation Court: in a workers' compensation hearing, "hearsay" evidence is allowed. They noted: "The hearsay exception is particularly important in terms of medical evidence, which often takes the form of unsworn letters, reports, and other documents."

Over the years, processes have developed to make the Workers' Compensation Court more judicial in demeanor, although one of the stated purposes of the Workers' Compensation Act in Title 39, chapter 71, MCA, is to have a system that is "primarily self-administering" and to that end "must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities" (39-71-105, MCA). Among the judicial approaches were:

- to create the Workers' Compensation Court as a court of record (in 2007 in partial response to *Thompson v. State*, 2007 MT 185, 338 Mont. 511, 167 P.3d 867); and
- to establish the right to compel the attendance of persons to testify and other procedural issues enacted in 1987.

Appointment Process

The Judicial Nomination Commission (four members appointed by the governor, two members

appointed by the Supreme Court, and one judge chosen by fellow district judges) provides a list of at least three but not more than five potential nominees to the governor when there is a vacancy or at the end of a workers' compensation judge's 6-year term. The governor's appointment is subject to Senate confirmation. If the governor does not appoint within 30 days of receiving the list, the chief justice is to make the appointment.

Jurisdiction

The Workers' Compensation Court has original jurisdiction over matters arising under the Workers' Compensation Act (including occupational disease claims) as well as disputes involving independent contractor exemptions and enforcement of the Department of Labor and Industry's investigatory powers.

The court serves as an appellate court for cases over which the Department of Labor and Industry has original jurisdiction for regulatory matters, such as appeals from orders and determinations issued by its Employment Relations Division, assessments of penalties against uninsured employers, regulation of attorney fees, and nonpayment-related medical disputes between insurers and providers.

Workers' Compensation Court Judges

July 1975 to August 1981 (6 years) - The Honorable William E. Hunt
 August 1981 to September 1993 (12 years) - The Honorable Timothy W. Reardon
 September 1993 to September 2005 (12 years) - The Honorable Michael O. McCarter
 September 2005 to May 2014 (8+ years) - The Honorable James Jeremiah Shea
 September 2014 to present - The Honorable David M. Sandler

Selected Court Statistics

from the Workers' Compensation Court website (<http://wcc.dli.mt.gov>, accessed 8/16/16)

	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>
Total Petitions	217	201	210	208
Of Which: Original Jurisdiction	213	199	210	206
Appeals from DLI	4	2	0	2
Regular Trials Held	16	18	19	7
Bench Ruling	25	17	18	19
Petitions Dismissed by Agreement	40	52	22	25
Settlements (all types)	10	21	13	29
Decisions (various types)	25	28	10	12
Appeals to Supreme Court	7	6	1	0

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